

## **Exhibit 10**

*State of California ex. rel. Ven-A-Care of the Florida Keys, Inc. v.  
Abbott Laboratories, Inc., et al.*

Exhibit to the Declaration of Nicholas N. Paul in Support of Plaintiffs' Motion for Summary  
Judgment as to Defendant Dey

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UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

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IN RE PHARMACEUTICAL INDUSTRY )

AVERAGE WHOLESALE PRICE LITIGATION)

-----X Volume 1

THIS DOCUMENT RELATES TO: ) MDL NO. 1456

The City of New York, et al., ) Civil Action

V. ) No. 01-12257-PBS

Abbott Laboratories, et al. )

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THIS DOCUMENT RELATES TO: )

State of California, ex rel. )

Ven-A-Care v. Abbott Laboratories,) )

Inc., et al., Case No. )

03-cv-11226-PBS )

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THURSDAY, MAY 15, 2008

DEPOSITION OF DEY, L.P. AND DEY, INC.

BY PAMELA MARRS

Reported By: CAROL NYGARD DROBNY, CSR No. 4018

Registered Merit Reporter

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1           A.     Again, I'm just going back to  
2     conversations with internal people that, you  
3     know, that was our understanding of what was  
4     expected in the -- in the industry.

5           Q.     Okay.

6           A.     And, in fact, we had a situation once  
7     where First DataBank actually lowered our AWP and  
8     customers called and complained and basically  
9     threatened not to buy our product.

10          Q.     So the way it works is that Dey  
11     determines a suggested AWP before the launch of a  
12     new product; correct?

13          A.     Dey reports a -- an AWP for a product  
14     before it's launched to the reporting services,  
15     yes.

16          Q.     And the reporting services publish the  
17     AWPs that are reported to it by Dey; correct?

18                 MR. DOYLE:   Objection.   Objection as to  
19     form.

20                 THE WITNESS:   And let me make one  
21     correction.

22                 We actually recently have stopped

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1 to all pricing compendia?

2 A. To the best of my knowledge. I don't  
3 know of any exceptions to that.

4 Q. And but for the one incident that you  
5 were referring to, so far as you know, Dey  
6 reported the same WAC to all pricing compendia as  
7 well; correct?

8 A. As far as I know, yeah, that's correct.

9 Q. Aside from AWP and WAC did Dey report  
10 any other prices or types of prices to the  
11 pricing compendia?

12 A. Based on my conversations with Russ  
13 Johnson, I'm not aware of any, no.

14 Q. Do you know of any instances in which  
15 Dey objected to a price published by any of the  
16 pricing compendia?

17 MR. DOYLE: Objection as to form.

18 THE WITNESS: The incident I referred  
19 to earlier in 2003, we -- First DataBank lowered  
20 our AWP, and we objected because customers were  
21 refusing to buy our product because we were not  
22 on a level playing field with everybody else, and

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1 so the same product was in the marketplace at  
2 different AWP's, which created a favorable  
3 advantage for the other competitors, so we did  
4 object to that through a Court action.

5 BY MR. AZORSKY:

6 Q. And that was an instance where First  
7 DataBank published not the AWP as reported by  
8 Dey, but, rather, established an AWP based upon a  
9 WAC; is that correct?

10 A. It's --

11 MR. DOYLE: Objection as to form.

12 THE WITNESS: It's my recollection that  
13 we reported a WAC decrease but not a change in  
14 AWP, but they took that WAC decrease as a trigger  
15 to then recalculate AWP, and I don't recall the  
16 exact calculation they made, but we were not  
17 notified, and, as I said, the customers were  
18 quite unhappy about it.

19 BY MR. AZORSKY:

20 Q. So Dey took First DataBank to Court  
21 over that?

22 A. We did.

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1 whatever price the Government choose -- chose to  
2 use from the other benchmarks --

3 BY MS. HANSCOM:

4 Q. Well, let's assume --

5 A. -- as opposed to --

6 The price compendia is my understanding  
7 provided information, but that wasn't the  
8 reimbursement rate; was it?

9 Q. If the pricing compendia has the WAC  
10 and the AWP, were you aware that reimbursement to  
11 providers was based on those prices that were in  
12 the pricing compendia?

13 MR. DOYLE: Objection as to form.

14 THE WITNESS: It was my understanding  
15 that the price reporting services -- that the  
16 Government had access to the information in price  
17 reporting services, but, again, it was also my  
18 understanding that there were a variety of  
19 formulas that could be chosen, but -- but if the  
20 formula chosen was AWP or WAC it was my general  
21 understanding that that was one of the sources  
22 that they would use.